

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DAVID L. FISH, JR.,

Plaintiff,

v.

MARINE BIOLOGICAL LABORATORY,

Defendant.

Civ. A. No. 05-11619-RGS

FILED
IN CLERK'S OFFICE
2005 NOV -7 AM 4:1
U.S. DISTRICT COURT
DISTRICT OF MASS.

**PLAINTIFF'S MOTION FOR RELIEF FROM ORDER ON DEFENDANT
MARINE BIOLOGICAL LABORATORY'S MOTION FOR JUDGMENT ON
THE PLEADINGS**

Pursuant to the Federal Rules of Civil Procedure 60(b), the Plaintiff submits to this Court this motion and the accompanying evidentiary exhibit. The Plaintiff moves this Court to provide him relief from the ORDER ON DEFENDANT MARINE BIOLOGICAL LABORATORY'S MOTION FOR JUDGMENT ON THE PLEADINGS entered in this Court on November 7, 2005 because the Plaintiff can prove to this Court that the DEFENDANT MARINE BIOLOGICAL LABORATORY'S MOTION FOR JUDGMNENT ON THE PLEADINGS submitted to this Court by the Defendant on August 30, 2005 was a deliberate effort by the Defendant to commit fraud upon this Court in order to deny the Plaintiff the legal protections and rights afforded to him under the Federal Equal Pay Act, Title VII of the Civil Rights Act of 1964, and the Massachusetts General Laws Chapter 151B or the Massachusetts Equal Pay Act.

GROUND FOR PLAINTIFF'S MOTION

The Defendant allowed council to make gross misrepresentations of statements contained in the Plaintiff's complaint to this Court that the Defendant knew to be untrue. As evidence that the Defendant committed fraud upon this Court, the Plaintiff respectfully submits to this Court the accompanying NON-EXEMPT POSITION CONTENT DOCUMENT (PCD). The Defendant's Director of Human Resources, Susan Goux, had possession of, and full knowledge of the content of this (PCD) when the Defendant Marine Biological Laboratory's Motion for Judgment on the Pleadings was made to this Court.

The plaintiff respectfully requests that this Court take special notice of the fact that this (PCD) was prepared by, approved by, and signed by the Defendant's Director of Housing and Conference Services, Mary Beckwith, who was specifically named in the Plaintiff's complaint [see (PCD) Page 1]. The Plaintiff respectfully requests that this Court also take special notice that on Page 6 of this (PCD), in the boxed section labeled 10. Additional Comments, Mary Beckwith definitively states that the Plaintiff was acting as Grade 7 Front Office Assistant while he was working under Mary Beckwith's supervision in the Swope Office when Ms Beckwith states: "**In addition we have four watch staff who also act as Front Office Assistants.**" This direct statement by Mary Beckwith proves to this Court that the Plaintiff was acting as a Front Office Assistant when he worked for Mary Beckwith, and this statement also proves to this Court that all of the allegations of sex discrimination made by the Plaintiff in his complaint are true in all factual respects and thus proves that the Defendant has defrauded this Court.

Conclusion

As a result of the aforementioned statements and evidence proving to this Court that the Defendant has committed fraud upon this Court, the Plaintiff respectfully requests that this Court provide him relief by setting aside this Courts ORDER ON DEFENDANT MARINE BIOLOGICAL LABORARTORY'S MOTION FOR JUDGMENT ON THE PLEADINGS and that this Court take any other independent action that this Court deems just or necessary to relieve the Plaintiff of the affects of the Defendant's actions in this matter

Respectfully submitted,



David L. Fish Jr.

David L. Fish Jr. Pro Se

REQUEST FOR ORAL ARGUMENT

Because the Plaintiff believes that oral argument will assist the Court in deciding this matter, he respectfully requests a hearing as to his Plaintiff's Motion for Relief from Order on Defendant Marine Biological Laboratory's Motion for Judgment on the Pleadings.

David L. Fish Jr.

Pro se,



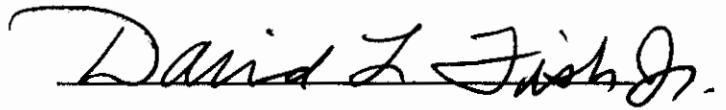
David L. Fish Jr.

David L. Fish, Jr.
63 Harriette Road
E. Falmouth, MA 02536
(508) 540-6014

Dated: November 6, 2006

CERTIFICATE OF SERVICE

I, David L. Fish Jr., hereby certify that on November 6, 2006, I caused a copy of the foregoing Plaintiff's Motion for Relief from Order on Defendant Marine Biological Laboratory's Motion for Judgment on the Pleadings and accompanying exhibit to be served, by first class mail upon the defendant's attorney, Julie Murphy Clinton.

Handwritten signature of David L. Fish Jr. in black ink.

Position Title: Assistant Coordinator of Housing

Date: 11/6/2003

Name: Suzanne Livingstone

Prepared by: Mary Beckwith

Division: Housing and Conference Services

Location: Swope

Approved by:

Reports to (Title): Director of Housing and Conference Services

Suzanne T. Livingstone
Position Holder

Mary Beckwith
Immediate Supervisor

1. Position Summary

Write one or two sentences that highlight the general functions or duties for which your position is responsible. (You may wish to read through the complete questionnaire before completing this item.)
This position assists the Coordinator of Housing with all housing application/assignment processes. In addition, this position is responsible for the design and content of the housing publication, the daily audit and other financial processes, and directing the Front Office Assistant staff in a variety of tasks.

2. Working Relationships

List the titles of individuals and organizations (to a maximum of ten) with which you have the most frequent contact. Include contacts both inside and outside the Company. Briefly describe the nature or purpose of those contacts.

Most Frequent Contacts	Nature or Purpose of Contact
<ol style="list-style-type: none">1. Coordinator of Housing2. Director of Housing/Conferences3. Accounts Receivable (Proposed)4. Front Office Assistants5. Clients6. Education (Admissions and Faculty Coordinators)7. Research Space Coordinator8. Digital Processing Center9. Communications10. Coordinator of Conferences	<ol style="list-style-type: none">1. Coordination of housing assignments, planning of housing application processes, consultation on assignment or billing questions/problems, general problem solving, discussion of assignment of tasks for Front Office Assistants.2. Consultation, problem solving, reporting of completed tasks.3. Coordination of daily financial processes, resolution of billing problems.4. Assist with training, assignment and coordination of tasks, checking of completed work.5. Answer questions, resolve problems, extend/shorten reservations6. Consultation on application process, resolve questions about applicants.7. Consultation on application process, resolve questions about applicants.8. Coordination of ID Cards for Clients9. Design and content development for housing

(Pg.2)

05-11619 RGS

3. Major Responsibility Areas

Beginning with the most important, briefly state the major responsibilities of this job, percent of total job and frequency of each activity.

Importance	Responsibility Areas (What you do)	% of Total Job	Frequency (Daily, Weekly, etc)
1.	Completing Check Ins/Check Outs (Daily Audit)	25% (higher in summer months and after a conference checks out)	Daily
2.	Preparing for Arrivals	15% (highest April-October)	Daily, 2X Week
3.	Housing Publication	10% (done in fall-must be finished by Dec. 1)	Yearly
4.	Daily Batchout/Daily Deposit	5%	Daily
5.	Processing Housing Applications	35% (higher winter/spring)	Daily
6.	Conference Group Housing Assignments	10% (high – April, Sept.-Nov.)	Daily- Fall, April
7.	Follow up with no shows	5%	Daily

Note: Percentages vary and shift throughout the year.

(Pg. 3)

05-11619 RGS

4. Special Responsibilities

	Yes	No
a. Do you monitor department expenditures and/or reconcile budgeted figures?		No
b. Do you contact outside vendors to order office supplies or services not available internally?	Yes	
c. Do you handle <u>confidential material</u> pertaining to sensitive personnel or business issues?	Yes	
d. Do you participate in the selection and purchase of new office equipment?	Yes	
e. Do you operate any machines or special equipment?	Yes	

For any of the above to which you answer yes, please explain and give examples.

b. Contacts:
 -Dymo Label machine vendor to get supplies, report problems
 -Laundry vending Company to report problems with laundry and change machines
 -Copy machine vendor to report problems

c. Deals with confidential information about client health issues in making housing assignments. Deals with confidential information about client's financial status at the MBL.

d. Researched Dymo label machines. Participated in the selection of new copier.

e. Operates dymo label machine, copy machine, fax machine, credit card machine, switchboard, service elevator. Is also proficient with digital camera and takes pictures for housing publications and web site.

5. Problems and Challenges

Describe the most difficult types of problems or the major challenges you face in performing your job.

- Implementing constantly changing processes and procedures.
- Conversion to new housing assignments software.
- Preparing publications and meeting deadlines during particularly busy times in office.
- Assuring the inclusion of new MBL information into publications
- Managing competing priorities in a high volume, high stress operation.
- Dealing with difficult clients in person, on the phone, and via email.
- Preparing for arrivals of large groups.

6. Decision Making Authority

Describe the authority permitted to your position by indicating which decisions you are expected to make and actions which you are expected to recommend.

Decisions Expected	Recommendations Expected
1. Content/Layout of Housing Publication 2. What tasks to assign to Front Office Assts. 3. Where to assign clients 4. Whether to extend or shorten a client stay 5. Whether to charge no shows	1. Revisions in housing assignment process 2. Changes to office processes/procedures 3. Changes/additions to housing policies

(Pg.4)
05-11619 RGS

7. Supervising the Work of Others

Are you responsible for the work of other people? Explain your role: e.g. assigning work, training new employees, solving problems.

- Responsible for assigning the work of 5 Front Office Assistants.
- Responsible for assisting with the training of Front Office Assistants.
- Acts as consultant to Front Office Assistants to assist in resolving problems and clarifying tasks.
- Responsible for assigning immediate repair needs to the Caretakers.
- Responsible for notifying Housekeeping staff of changes to housing assignments which require adjustments in the cleaning schedule.

8. Review of Work

a. What happens to your finished work? Who receives it? In what form?

b. Do you have to submit any work in progress for review and approval? To whom?

a. Finished work is in the form of completing check ins and check outs on a daily basis assuring that charges and account numbers are correct for Financial Services, submitting daily deposit to Accounts Receivable, batching out of credit card machine so that credit card transactions are released to the bank (critical to A/R dept.), preparation for arrivals – check in envelopes are complete and ensuring that the Digital Processing Center has printed cards needed for check in, completing the housing publication each year. Clients receive much of this work directly.

b. Housing publication must be submitted to both Communications Office and Director of Housing and Conferences for review and approval.

9. Organizational Relationships

Please indicate your position within your department by listing the following:

a. The position of your Supervisor reports to: (By Title)

Director and CEO of the MBL

b. Other positions reporting to your Supervisor: (By Title)

Conference and Sales Manager – J. Erik Jonsson Center
Coordinator of Housing
Coordinator of Conferences and Meetings
Front Office Assistants (5)
Caretaker of On Campus Housing
Housekeepers (7)

(Pg. 5)
05-11619 RGS

10. Additional Comments

Please indicate any other information you think would be helpful to someone trying to understand the nature, scope, or purpose of your position.

In order to improve the effectiveness of the Housing and Conference Services operation it is necessary to make some changes to the Assistant Coordinator of Housing position which will require additional responsibilities that are most appropriately assigned to this position. The additional responsibilities fall into three categories: Housing Publication, Financial Functions, and Task Management for the Front Office Assistant Staff.

Starting in 2004 the Communications office is requiring a more professional look to the main housing application and that it be more consistent with other MBL publications. This publication is used as a guidebook for all housing guests and has grown considerably in the last few years as we have formalized and expanded housing procedures and policies. In addition it has been necessary to work with other offices on campus to include information about such things as computer access, door access, etc. Neither the Director of Housing and Conferences nor the Coordinator of Housing has the time to work with this project given other priorities at the time of year in which it must be produced. It is best assigned to the Assistant Coordinator of Housing.

The daily financial functions such as the daily audit, the daily cash count, and the daily credit card batch out have previously fallen into the role of the Front Office Assistant. With the recent change in our housing assignments software and given the fact that there is no longer a Front Office Assistant who has a Monday through Friday schedule, these functions are now best coordinated by the Assistant Coordinator of Housing who is here Monday through Friday. This also gives the Accounts Receivable Office a consistent person with whom to work to resolve problems and answer questions. In addition it is critical that the financial information that is transferred electronically on a daily basis to financial services is monitored for accuracy. Again, the most appropriate person to do this would be the Assistant Coordinator of Housing.

Finally, in recent years our Front Office Assistant staff has grown from two to five people. In addition we have four watch staff who also act as Front Office Assistants. A variety of tasks are assigned to these folks by a number of different people in the organization. It is best to have all tasks funneled through one person who can assign and monitor tasks most effectively.

Given the above changes and given the fact that the Assistant Coordinator of Housing currently carries the same grade as the Front Office Assistants, this is a good time to review this position to determine if a reclassification is warranted.

(Pg. 6)

05-11619 RGS